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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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MICHAEL A. BACON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

**MEMORANDUM DECISION AND  
ORDER DENYING CERTIFICATE  
OF APPEALABILITY**

Case No. 2:19-cv-00735-DN  
(Criminal No. 2:14-cr-00563-DN)

District Judge David Nuffer

This case is on limited remand from the Tenth Circuit Court of Appeals to consider whether to issue a certificate of appealability.<sup>1</sup> “A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.”<sup>2</sup> “To achieve this, [the applicant] must show ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and . . . whether the district court was correct in its procedural ruling.’”<sup>3</sup>

Mr. Bacon cannot make a substantial showing of the denial of a constitutional right. His claims<sup>4</sup> are not the appropriate subject matter of a motion under 28 U.S.C. § 2255.<sup>5</sup> He makes no argument demonstrating how his claims are not barred by his plea statement, in which he waived

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<sup>1</sup> Order, *United States v. Bacon*, no. 19-4167 (10th Cir. Dec. 10, 2019), [docket no. 11](#), filed Dec. 10, 2019.

<sup>2</sup> 28 U.S.C. § 2253(c)(2).

<sup>3</sup> *United States v. Wicken*, 514 Fed. App’x 721, 723 (10th Cir. 2013) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

<sup>4</sup> Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (§ 2255 Motion”), [docket no. 1](#), filed Oct. 3, 2019.

<sup>5</sup> Memorandum Decision and Order of Dismissal at 5-6, [docket no. 6](#), filed Nov. 20, 2019.

his right to seek relief under § 2255 except on the issue of ineffective assistance of counsel.<sup>6</sup> And he makes no coherent argument showing the denial of a constitutional right.

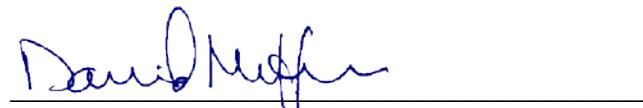
Moreover, jurisdiction over Mr. Bacon’s § 2255 Motion was lacking because the § 2255 Motion was his second attempt to obtain relief from his sentence under § 2255, and he did not obtain prior authorization for the filing from a panel of the Tenth Circuit Court of Appeal.<sup>7</sup> Mr. Bacon also did not assert newly discovered evidence or a new rule of constitutional law, which is required to obtain such authorization.<sup>8</sup>

No reasonable jurist would find the dismissal of Mr. Bacon’s § 2255 Motion for lack of jurisdiction debatable. Therefore,

IT IS HEREBY ORDERED that Mr. Bacon is denied a certificate of appealability.

Signed December 12, 2019.

BY THE COURT



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David Nuffer  
United States District Judge

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<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *Id.* at 6.